



Paper No. 11

ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON DC 20005

COPY MAILED

DEC 17 2003

OFFICE OF PETITIONS

In re Application of  
Hara et al.  
Application No. 10/092,465  
Filed: March 8, 2002  
Attorney Docket No. 108384-00045

: DECISION ON PETITION  
:  
:  
:  
:

This is a decision on the petition filed on December 3, 2003, requesting that the above-identified application be accorded a filing date of March 8, 2002.

On March 8, 2002, applicants deposited the above-identified application. However, on May 29, 2002, the Office mailed a "Notice Of Incomplete Application," requiring, inter alia, drawings and stating that the filing date would be the date of receipt of the omitted drawings. In response, on June 28, 2002, applicants submitted nine sheets of drawings. Thereafter, the Office accorded the application a filing date of June 28, 2002, the date applicants filed the omitted drawings. On December 3, 2003, applicants filed the present petition, a copy of the application transmittal, and a copy of their postcard receipt date-stamped March 8, 2002.

Upon review of the record, nine sheets of drawings have not been located in the official file. Initially, the Office notes that the postcard receipt does not itemize with particularity the total number of sheets of drawings. Rather, applicants' postcard receipt indicates a "New Application" was filed on March 8, 2002. Additionally, the box for drawings on the postcard was not checked.

As set forth in Section 503 of the Manual of Patent Examining Procedure, in pertinent part:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO. The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, applicant identifier, application number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc.,

and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application), etc.

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings, etc.) of an application if one of the components or portion of a component is found to be missing by the PTO. Each separate component should be specifically and properly itemized on the postcard. (Emphasis added).

Because the postcard receipt does not properly identify and itemize the papers, it does not serve as prima facie evidence that drawings were filed on March 8, 2002. A search of the official file reveals that on March 8, 2002, applicants submitted a "Continuing Application Transmittal Under Rule 1.53(b)," which stated that the application is a continuation-in-part of prior application No. 09/463,967 and that the entire disclosure from the prior application is incorporated by reference.

Section 201.06(c) of the Manual for Patent Examining Procedure permits the entering of a portion of the prior application into a continuation or divisional application when the portion of the prior application was inadvertently omitted from the continuation or divisional application. Based on applicants' representation that the drawings supplied on June 28, 2002, constitute a copy of the drawings filed in the prior application, and the incorporation by reference statement appearing in Transmittal deposited on March 8, 2002, it is appropriate, on petition, to accord the application the requested filing date.

The petition is **granted**.

**The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of March 8, 2002, using the drawing sheets submitted on June 28, 2002.**

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5589.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions

## CLAIMS

9. A platinum sputtering target material, wherein said target material containing columnar crystals grown in a direction normal to a sputtering surface, and a ratio of an integral intensity of a (200) face to that of another arbitrary crystal face as determined by X-ray diffractometry is greater than the corresponding ratio as measured for a powder platinum sample.

10 10. A ruthenium sputtering target material, wherein said target material containing columnar crystals grown in a direction normal to a sputtering surface, and a ratio of an integral intensity of a (112) face to that of another arbitrary crystal face as determined by X-ray diffractometry is greater than the corresponding ratio as measured for a powder ruthenium sample.

11 11. A ruthenium sputtering target material, wherein said target material containing columnar crystals grown in a direction normal to a sputtering surface, and a ratio of an integral intensity of a (002) face to that of another arbitrary crystal face as determined by X-ray diffractometry is greater than the corresponding ratio as measured for a powder ruthenium sample.

12 12. A ruthenium sputtering target material, wherein